

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-217058

DATE: December 5, 1984**MATTER OF:**

Tecom Incorporated

DIGEST:

A Small Business Administration Office of Hearings and Appeals ruling that a solicitation contained an incorrect small business size standard, which is received by the procuring agency after bid opening, has prospective effect only and there is no requirement that the solicitation be canceled.

Tecom Incorporated (Tecom) protests invitation for bids No. DAKF19-84-B-0051, issued by the Department of the Army (Army), Fort Riley, Kansas.

We summarily deny the protest.

The solicitation was issued as a total small business set-aside, with a small business size standard of \$13.5 million average annual receipts for the 3 previous years. The Army amended the solicitation, changing the size standard to \$3.5 million average annual receipts for the 3 previous years. Tecom and two other potential bidders protested the new, more restrictive size standard to the Small Business Administration (SBA) Office of Hearings and Appeals. Those firms also requested that the Army postpone bid opening until the SBA ruled on the protest. The Army refused to postpone bid opening.

After bid opening, the SBA ruled that the amended size standard was erroneous and stated that the correct standard was 1,500 employees. That, apparently, is a less restrictive standard than is the \$3.5 million average annual receipts.

Tecom argues that the solicitation should be canceled and reissued with the correct size standard. Tecom contends that competition will be enhanced, with the resulting likelihood that the Army will receive a lower price.

The procedures for protesting the selection of a size standard for a particular procurement are set forth at 13 C.F.R. § 121.3-6 (1984) and in section 19.303 of the Federal Acquisition Regulation (FAR), 48 Fed. Reg. 42,102

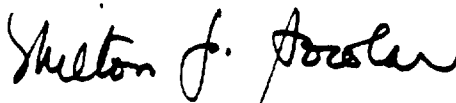
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(1983) (to be codified at 48 C.F.R. § 19.303). Neither regulation requires a bid opening date to be postponed pending an Office of Hearings and Appeals decision on a protested size standard. The FAR specifically provides that SBA decisions received by the contracting officer after the due date for bids or offers "shall not apply to the pending acquisition, but shall apply to future acquisitions of the product or service." FAR § 19.303(c)(3).

Since the SBA decision in this case was received by the contracting officer after the date for bid opening, there is no requirement that the solicitation be canceled. Logistical Support, Inc., B-205538, Mar. 10, 1982, 82-1 C.P.D. ¶ 227. However, the correct size standard must be applied to future procurements for this product.

We summarily deny the protest without obtaining an agency report since, on its face, the protest is clearly without merit. 4 C.F.R. § 21.3(g) (1984).

for 
Comptroller General
of the United States